

BOARD OF EQUALIZATION RULES FOR TAX APPEALS

California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization – Rules for Tax Appeals
Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

ARTICLE 1: APPLICATION OF CHAPTER 2 AND DEFINITIONS

5200. APPLICATION OF CHAPTER 2 AND DEFINITIONS.

This chapter applies to petitions for redetermination, administrative protests, applications for administrative hearings, claims for refund, and requests for relief filed with the Board under the:

- (a) Sales and Use Tax Law. Part 1 of division 2 of the Revenue and Taxation Code.
- (b) Motor Vehicle Fuel Tax Law. Part 2 of division 2 of the Revenue and Taxation Code.
- (c) Use Fuel Tax Law. Part 3 of division 2 of the Revenue and Taxation Code.
- (d) Tax on Insurers Law. Part 7 of division 2 of the Revenue and Taxation Code.
- (e) Cigarette and Tobacco Products Tax Law. Part 13 of division 2 of the Revenue and Taxation Code.
- (f) Alcoholic Beverage Tax Law. Part 14 of division 2 of the Revenue and Taxation Code.
- (g) Timber Yield Tax Law. Part 18.5 of division 2 of the Revenue and Taxation Code.
- (h) Energy Resources Surcharge Law. Part 19 of division 2 of the Revenue and Taxation Code.
- (i) Emergency Telephone Users Surcharge Law. Part 20 of division 2 of the Revenue and Taxation Code.
- (j) Hazardous Substances Tax Law, which is also applicable to the Childhood Lead Poisoning Prevention Fee and Occupational Lead Poisoning Prevention Fee. Part 22 of division 2 of the Revenue and Taxation Code.
- (k) Integrated Waste Management Fee Law. Part 23 of division 2 of the Revenue and Taxation Code.
- (l) Oil Spill Response, Prevention, and Administration Fees Law. Part 24 of division 2 of the Revenue and Taxation Code.
- (m) Underground Storage Tank Maintenance Fee Law. Part 26 of division 2 of the Revenue and Taxation Code.
- (n) Fee Collection Procedures Law. Part 30 of division 2 of the Revenue and Taxation Code.
- (o) Diesel Fuel Tax Law. Part 31 of division 2 of the Revenue and Taxation Code.

The definitions in sections 5511 and 5512 of this division apply to this chapter. Where section 5511 conflicts with this chapter, this chapter controls.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5201. APPLICATION OF THE INTERNATIONAL FUEL TAX AGREEMENT.

To the extent that sections in this chapter conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement control.

Note: Authority cited: Government Code section 15606(a); Health and Safety Code sections 105190, 105310; Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251,

13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301, 60601; Public Utilities Code section 893.

Reference: Revenue and Taxation Code sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5202. NOTICE REQUIREMENTS.

Any notice given under this chapter must be served personally or by mail in the manner prescribed by statute for service of notice of a deficiency determination.

Note: Authority cited: Government Code section 15606(a); Health and Safety Code sections 105190, 105310; Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301, 60601; Public Utilities Code section 893.

Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 11352, 30243.5, 32313, 38434, 43352, 45353, 46303, 50120.3, 55103, 60333.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 2A: PETITIONING NOTICES OF DETERMINATION AND NOTICES OF DEFICIENCY ASSESSMENT

5210. PERSONS WHO MAY FILE PETITIONS FOR REDETERMINATION.

(a) Any person, supplier, distributor, insurer, surplus line broker, user, or tax or fee payer against whom a notice of determination or notice of deficiency assessment is issued, or a representative who requested a notice of determination pursuant to Revenue and Taxation Code sections 7675.1, 8782.1, or 60316, that disagrees with any item included in the notice of determination or notice of deficiency assessment (except an item described in section 5215.6) may file a petition for redetermination requesting that the Board reconsider the notice of determination or notice of deficiency assessment.

(b) Any person directly interested in a notice of determination issued against a person described in subdivision (a) may file a petition for redetermination requesting that the Board reconsider the notice of determination, but only if the notice of determination was issued under one of the following sections of the Revenue and Taxation Code:

- (1) Sales and Use Tax Law. Sections 6481 or 6511.
- (2) Alcoholic Beverage Tax Law. Sections 32271 or 32291.
- (3) Timber Yield Tax Law. Sections 38416 and 38425.
- (4) Hazardous Substances Tax Law. Section 43201.
- (5) Integrated Waste Management Fee Law. Section 45201.
- (6) Oil Spill Response, Prevention, and Administration Fees Law. Sections 46201 or 46251.
- (7) Underground Storage Tank Maintenance Fee Law. Section 50113.
- (8) Fee Collection Procedures Law. Section 55061.

A person is directly interested in a notice of determination if the person would have an interest in the subject matter of potential litigation involving the determination that would permit the person to intervene in such potential litigation under Code of Civil Procedure section 387, subdivision (b). Such persons include, without limitation, predecessors, successors, receivers, trustees, executors, administrators, assignees, and guarantors. A person directly interested does not include a consumer who owes or has paid tax reimbursement to a retailer, or persons such as lienholders.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6561, 7710, 8851, 12428, 30175, 30261, 32301, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081, 60350.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5210.5. SUCCESSOR'S PETITION FOR RECONSIDERATION.

A successor served with a notice of successor liability under Revenue and Taxation Code sections 6814, 9024, 38564, 46454, or 60474 may file a petition for reconsideration of successor liability in the manner provided in this article for petitioning any other liability imposed under the Sales and Use Tax Law, Use Fuel Tax Law, Timber Yield Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, or Diesel Fuel Tax Law, respectively.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6814, 9024, 38564, 46454, 60474.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5211. LIMITATION PERIOD FOR FILING PETITIONS AND STAY OF COLLECTION ACTIVITIES.

(a) A petition for redetermination must be filed within 30 days from the date that the notice of determination or notice of deficiency assessment was mailed to the person, supplier, distributor, insurer, surplus line broker, user, or tax or fee payer against which the notice was issued.

(b) Notwithstanding subdivision (a), petitions for redetermination of determinations issued under Revenue and Taxation Code section 30173 (Cigarette and Tobacco Products Tax Law) must be filed within 10 days from the date that the notice of determination was mailed to the distributor.

(c) A determination contained within a notice of determination or notice of deficiency assessment becomes final if a petition for redetermination is not filed within the time periods provided for in subdivisions (a) and (b).

(d) A petition for redetermination is premature and not valid if it is filed before a notice of determination, notice of deficiency assessment, or notice of successor liability is issued. However, a premature petition for redetermination may be treated as an administrative protest under section 5220.

(e) The filing of a timely petition for redetermination will stay collection activities with regard to amounts contained in the notice of determination or notice of deficiency assessment being petitioned, until after the petition has been acted upon and the action becomes final.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6561, 7710, 8851, 12428, 30174, 30175, 30261, 32301, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081, 60350.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5212. CONTENTS OF PETITIONS FOR REDETERMINATION, AND SUPPORTING ARGUMENTS AND EVIDENCE.

(a) Every petition for redetermination must:

(1) Be in writing.

(2) Identify the amounts the petitioner wishes to contest (petitioners may contest all or a portion of the amount shown on a notice), if known.

(3) State the specific grounds or reasons why the notice of determination or notice of deficiency assessment should be reconsidered.

(4) Be signed by the petitioner or the petitioner's authorized representative.

(b) A petition for redetermination may include a request for an appeals conference conducted under article 6 of this chapter, a request for an oral hearing before the Board, or both. If a petition for redetermination only includes a request for an appeals conference, an oral hearing before the Board may still be requested in accordance with section 5266.

(c) The filing of a completed form provided by the Board for use as a petition for redetermination will satisfy the requirements of subdivision (a).

(d) A petitioner may submit copies of any supporting written arguments or documentary evidence along with its petition for redetermination.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38442, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6561.5, 7710.5, 8851.5, 12428, 30261.5, 32301.5, 38442, 40092, 41086, 43302, 45302, 46352, 50115, 55082, 60351.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5212.5. AMENDMENTS TO PETITIONS FOR REDETERMINATION.

A petition for redetermination may be amended to state additional grounds or reasons why the notice of determination or notice of deficiency assessment should be reconsidered at any time prior to the date on which the Board issues its order or decision upon the petition for redetermination.

Note: Authority cited: Government Code section 15606, Government Code; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6561.5, 7710.5, 8851.5, 12428, 30261.5, 32301.5, 38442, 40092, 41086, 43302, 45302, 46352, 50115, 55082, 60351.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5213. ACCRUAL OF INTEREST.

The filing of a petition for redetermination does not stop the accrual of interest.

Note: Authority cited: Government Code section 15606, Government Code; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6482, 6513, 7674, 7661, 8777, 8803, 12632, 30171, 30202, 30223, 32271, 32291, 38412, 38423, 40072, 40083, 41071, 41082, 43201, 45201, 46201, 46253, 50113, 55061, 60302, 60314.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5214. ADDITIONAL COPY OF PETITIONS FOR REDETERMINATION FILED UNDER THE TAX ON INSURERS LAW.

An insurer or surplus line broker filing a petition for redetermination of a deficiency assessment issued under the Tax on Insurers Law must file a copy of its petition with the Commissioner of Insurance, c/o Premium Tax Audit Bureau, at the same time it files its petition for redetermination in accordance with section 5216.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code section 12428.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5215. SCOPE OF PETITIONS FOR REDETERMINATION FILED UNDER HAZARDOUS SUBSTANCES TAX LAW.

(a) Hazardous or Extremely Hazardous Waste. All petitions for redetermination filed under Revenue and Taxation Code section 43301 will be acknowledged. However, no determination will be made as to whether any substance is a hazardous or extremely hazardous waste. A petition for redetermination based upon such grounds will be forwarded to the Director of Toxic Substances Control for determination in accordance with Revenue and Taxation Code section 43301, and may not be considered until after the Director of Toxic Substances Control has made his or her determination.

(b) Childhood Lead Poisoning Prevention Fee.

(1) A petition for redetermination of the Childhood Lead Poisoning Prevention Fee may be founded upon any grounds, including such grounds as:

(A) The petitioner's industry did not contribute in any manner to environmental lead contamination;

(B) The petitioner's lead or lead containing product does not currently or did not historically result in quantifiable persistent lead contamination; or

(C) The amount of the fee assessed does not reflect the petitioner's market share or is incorrectly computed.

(2) A petition founded upon grounds described in subparagraphs (A), (B), or (C) of paragraph (1) will not be acted upon until after the State Director of Health Services has acted upon the petitioner's application for exemption from the fee or reassessment of the fee. Applications for exemption should be submitted to the State Department of Health Care Services in the manner provided in California Code of Regulations, title 17, section 33040. Applications for reassessment should be submitted to the State Department of Health Services in the manner provided in California Code of Regulations, title 17, section 33050.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43301, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code section 43301; Health and Safety Code section 105310.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5215.4. SCOPE OF PETITIONS FOR REDETERMINATION FILED UNDER COVERED ELECTRONIC WASTE RECYCLING FEE.

All petitions for redetermination of the Covered Electronic Waste Recycling Fee filed in accordance with section 5216 will be acknowledged. However, no determination will be made as to whether an item is or is not a covered electronic device. A petition for redetermination based upon such grounds will be forwarded to the Department of Toxic Substances Control for determination in accordance with Public Resources Code section 42464.6.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Public Resources Code section 42464.6.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5215.6. SCOPE OF PETITION FOR REDETERMINATION FILED UNDER WATER RIGHTS FEE LAW.

Under Water Code section 1537, a petition for redetermination under the Fee Collection Procedures Law should be filed with the State Water Resources Board if the petition requests reconsideration of a determination by the State Water Resources Control Board regarding the amount of the water rights fee or that a person or entity is required to pay such fee.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Water Code section 1537.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5216. FILING PETITIONS FOR REDETERMINATION.

(a) The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of petitions and related documents. A petition or related document may be filed electronically under this section if an electronic copy of such document is transmitted to the appropriate section or group identified in subdivision (b) for the tax or fee law at issue in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(b) Petitions for redetermination and related documents may also be hand delivered to the Board's headquarters at 450 N Street, in Sacramento, California, or mailed to the address provided below for the particular tax or fee law at issue:

(1) Sales and Use Tax Law.

Petitions Section, MIC: 38
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0038

(2) Hazardous Substances Tax Law (Except Childhood Lead Poisoning Prevention Fee), Occupational Lead Poisoning Prevention Fee, Water Rights Fee, Covered Electronic Waste Recycling Fee, Tire Recycling Fee, Integrated Waste Management Fee, and Marine Invasive Species Fee Collection Law

Environmental Fees Division, MIC: 57
Audit Unit
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0057

(3) Tax on Insurers Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge, and Natural Gas Surcharge.

Excise Taxes Division, MIC: 56
Refund and Petition Group
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0056

(4) Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Diesel Fuel Tax Law, and Childhood Lead Poisoning Prevention Fee.

Fuel Tax Division, MIC: 30
Petition Group
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0030

(5) Timber Yield Tax Law.

Timber Yield Tax Section, MIC: 60
State Board of Equalization
P. O. Box 942879
Sacramento, CA 94279-0060

(c) The Chief of Board Proceedings may reject any petition for redetermination or related document filed in any manner that is not authorized by this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6561, 6814, 7710, 8851, 12428, 30175, 30261, 32301, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081, 60350.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

2. In subdivision (b)(2), changed a period to a comma after word fee in Integrated Waste Management Fee. Adopted 5-28-08; Effective 7-16-08.

5217. ASSIGNMENT AND ACKNOWLEDGMENT OF PETITIONS FOR REDETERMINATION.

(a) After receipt, a petition for redetermination will be assigned to the appropriate section or group listed in section 5216 based upon the type of tax or fee at issue.

(b) Once a petition for redetermination is assigned, Board Staff from the assigned section or group will promptly send the petitioner a letter acknowledging receipt of the petition for redetermination, which will contain the contact information for the assigned section or group.

(c) If necessary, the acknowledgement letter may request additional documentary evidence to support the petition for redetermination.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5218. REVIEW OF THE PETITION BY THE ASSIGNED SECTION.

(a) Initial Review of Petition. Board Staff from the assigned section must review the petition, notice of determination, and any other relevant information.

(b) Referral to District Office or Board Section. Board Staff from the assigned section may refer the petition to Board Staff in the district office or Board Section that issued the notice being petitioned for further investigation and comment.

(c) Scope of Review. Board Staff from the assigned section must look for consistency, adequacy of procedures, proper application of law, and consideration of any recent law changes or Board Memorandum Opinions that may affect the audit or investigation findings, where appropriate.

(d) Findings. Upon completion of the review, Board Staff from the assigned section must present its findings to the petitioner.

(e) Agreement or Disagreement. If the petitioner agrees with the Board staff's findings, or fails to request an appeals conference and/or oral hearing, a notice of redetermination will be issued in accordance with such findings. If the petitioner disagrees with any portion of Board staff's findings, and indicates that disagreement by requesting an appeals conference conducted under article 6 of this chapter, or by requesting or confirming a previous request for an oral hearing, Board Staff from the assigned section must prepare a summary analysis.

(f) The summary analysis is a written summary of the petitioner's contentions regarding the notice of determination or notice of deficiency assessment, the position of the Department that issued the notice, and the reasons Board Staff from the assigned section believes that the Department's position should be sustained in whole or in part.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5219. MAILING THE SUMMARY ANALYSIS AND SCHEDULING THE APPEALS CONFERENCE.

Once the summary analysis is completed, Board Staff from the assigned section or group will forward the petition file to the Board Proceedings Division and mail a copy of the summary analysis to the petitioner. An appeals conference will then be scheduled in accordance with article 6 of this chapter.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 2B: TREATMENT OF PREMATURE OR UNTIMELY PETITION AS AN ADMINISTRATIVE PROTEST

5220. PREMATURE OR UNTIMELY PETITION MAY BE TREATED AS AN ADMINISTRATIVE PROTEST.

(a) If a petition for redetermination is filed prior to or after the expiration of the applicable time periods provided for in section 5211, the premature or untimely petition may be treated as an administrative protest when determined by the Deputy Director of the Department that issued the petitioned notice. Board Staff shall advise persons filing premature petitions to file timely petitions.

(b) If a premature or untimely petition is treated as an administrative protest, the administrative protest will be reviewed in the same manner as a petition for redetermination.

(c) Notwithstanding subdivision (b) of this section:

(1) A request for an appeals conference conducted under article 6 of this chapter may be denied on an administrative protest, however, such requests will be liberally granted; and

(2) A request for an oral hearing before the Board may be denied on an administrative protest, however, such requests will be liberally granted.

(d) A claim for refund should be filed for each payment made on an administrative protest.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6981, 8191, 9196, 12951, 30421, 32440, 38631, 40121, 41107, 43491, 45801, 46551, 50151, 55281, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5220.4. ACCRUAL OF INTEREST.

The treatment of a premature or untimely petition for redetermination as an administrative protest does not stop the accrual of interest.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6482, 6513, 7674, 7661, 8777, 8803, 12632, 30171, 30202, 30223, 32271, 32291, 38412, 38423, 40072, 40083, 41071, 41082, 43201, 45201, 46201, 46253, 50113, 55061, 60302, 60314.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5220.6. NO STAY OF COLLECTION ACTIVITIES.

In general, the treatment of a premature or untimely petition for redetermination as an administrative protest does not stay efforts to collect any unpaid amounts at issue in the administrative protest. This is because the amounts contained in the notice of determination or notice of deficiency assessment being protested became final and collectible when the time to file a timely petition for redetermination expired.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6561, 7710, 8851, 12428, 30174, 30261, 32301, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081, 60350.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 2C: CONTESTING A JEOPARDY DETERMINATION

5221. NOTICE OF JEOPARDY DETERMINATION.

(a) If the collection of any tax or fee or any amount of tax or fee required to be collected and paid to the state, or of any determination or other amount required to be paid to the state will be jeopardized by delay, a notice of jeopardy determination may be issued.

(b) The notice of jeopardy determination shall state the tax or fee, or amount of tax or fee required to be collected or other amount.

(c) The amounts stated in the notice of jeopardy determination are immediately due and payable.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6536, 7698, 8826, 30241, 32311, 38431, 43350, 45351, 46301, 50120.1, 55101, 60330.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5222. PERSONS WHO MAY FILE A PETITION FOR REDETERMINATION OF A JEOPARDY DETERMINATION.

(a) The person against whom a jeopardy determination is made or the person's authorized representative may file a petition for redetermination of the jeopardy determination and related documents.

(b) The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) to file petitions for redetermination and related documents. A petition for redetermination of a jeopardy determination or related document may be filed electronically if an electronic copy of such document is transmitted to the appropriate section identified in the notice of jeopardy determination in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(c) A petition for redetermination of a jeopardy determination and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the address provided on the notice of jeopardy determination. The Chief of Board Proceedings may reject any petition for redetermination of a jeopardy determination or related document filed in any manner that is not authorized by this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5222.4. CONTENTS OF PETITION FOR REDETERMINATION OF JEOPARDY DETERMINATION.

A petition for redetermination of a jeopardy determination must satisfy all the requirements for a petition for redetermination as provided in article 2A of this chapter.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5222.6. LIMITATION PERIOD FOR PETITION FOR REDETERMINATION OF JEOPARDY DETERMINATION.

(a) A petition for redetermination of a jeopardy determination must be filed within the earlier of 10 days from the date that the notice of jeopardy determination was mailed or personally served.

(b) The provisions of article 2A of this chapter do not apply to the time period in which to file a petition for redetermination of a jeopardy determination.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5223. SECURITY REQUIREMENT FOR PETITION.

A petition for redetermination of a jeopardy determination will not be accepted unless the petitioner deposits the amount of security indicated in the notice of jeopardy determination within the 10-day period specified in section 5222.6.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5224. REVIEW OF PETITION FOR REDETERMINATION OF JEOPARDY DETERMINATION.

(a) A petition for redetermination of a jeopardy determination may raise any objections the petitioner has to the notice of jeopardy determination, including objections to the appropriateness of issuing the notice of jeopardy determination.

(b) The administrative review of a petition for redetermination of a jeopardy determination follows the same procedures applicable to the review of other petitions for redetermination under article 2A of this chapter and will be done promptly.

(c) A petition for redetermination of a jeopardy determination issued under the Hazardous Substances Tax Law or Covered Electronic Waste Recycling Fee will be reviewed in accordance with sections 5215 and 5215.4, respectively.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5225. PERSONS WHO MAY FILE AN APPLICATION FOR ADMINISTRATIVE HEARING; MANNER OF FILING; AND CONSOLIDATION WITH PETITION.

(a) The person against whom a jeopardy determination is made may file an application for an administrative hearing for one or more of the following purposes:

- (1) To establish that the jeopardy determination is excessive.
 - (2) To establish that the sale of the property that may be seized after issuance of the jeopardy determination, or any part thereof, should be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.
 - (3) To request the release of all or part of the property to the person.
 - (4) To request a stay of collection activities.
 - (5) To request administrative review of any other issue raised by the jeopardy determination.
- (b) The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of applications for administrative hearings and related documents. An application for an administrative hearing or related document may be filed electronically under this section if an electronic copy of such document is transmitted to the appropriate section or group identified in the notice of jeopardy determination in accordance with instructions provided on the Board's website at www.boe.ca.gov. An application for an administrative hearing and related documents may also be filed by mailing the application and related documents to the address shown on the notice of jeopardy determination, or hand delivering the application and related documents to the Board's headquarters at 450 N Street in Sacramento, California. The Chief of Board Proceedings may reject any application for an administrative hearing or related document filed in any manner that is not authorized by this section.
- (c) If an application is filed under this section and a petition is filed under section 5222, the application and petition will be consolidated into one administrative hearing.
- (d) A petition for redetermination of a jeopardy determination issued under the Tax on Insurers Law or Water Rights Fee Law must be filed in accordance with section 5214 and 5215.6, respectively.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601.

Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 50120.3, 55103, 60333.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5226. LIMITATION PERIOD FOR FILING APPLICATION FOR ADMINISTRATIVE HEARING.

- (a) An application for administrative hearing shall be filed within the earlier of 30 days from the date that the notice of jeopardy determination was mailed or personally served.
- (b) An application for administrative hearing filed after the expiration of the time period provided for in subdivision (a) should be accompanied by a statement demonstrating why the person believes there was good cause for the person's failure to file a timely application.
- (c) If good cause existed for failing to file a timely application, an administrative hearing may still be granted.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46303, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601.

Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, 60333.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5227. CONTENTS OF APPLICATION FOR ADMINISTRATIVE HEARING.

Every application for administrative hearing must:

- (a) Be in writing.
- (b) Identify the purpose for which the person has applied for an administrative hearing.
- (c) State the specific factual or legal grounds upon which the application is founded.

(d) Be signed by the person or the person's authorized representative.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46303, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601.

Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, 60333.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5228. OPTION TO POST SECURITY WITH APPLICATION FOR ADMINISTRATIVE HEARING.

(a) A person is not required to post security to obtain an administrative hearing.

(b) Property seized under a notice of jeopardy determination or jeopardy assessment may not be sold without the consent of the owner during the first 30 days after service of such notice, nor while a timely application for administrative hearing is pending. The storing of the property during the period the application is pending will be at the applicant's expense. Storage expenses may be waived, credited, or refunded.

(c) The filing of an application for an administrative hearing will not stay other collection activities not identified in subdivision (b). A stay of other collection activities will only arise if the person deposits the amount of security indicated in the notice of jeopardy determination within the 10-day period specified in section 5223.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46303, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601.

Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, 60333.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5229. ASSIGNMENT OF APPLICATION FOR ADMINISTRATIVE HEARING TO APPEALS DIVISION FOR APPEALS CONFERENCE.

(a) Upon receipt of an application for administrative hearing, Board Staff shall promptly:

- (1) Acknowledge its receipt;
- (2) Assign the application to the Appeals Division for an appeals conference;
- (3) Schedule an appeals conference; and
- (4) Notify the applicant regarding the date, time and location of the appeals conference.

(b) Upon completion of the appeals conference, Appeals Staff will promptly issue a determination as to each issue raised in the application and provide notice of the determination to the applicant in a Decision and Recommendation. Appeals Staff may find that the applicant is not entitled to the relief requested or may order that one or more of the following types of relief be granted: that the sale of the property will irreparably damage the applicant and that the property will not be sold; that the property, or a portion thereof, be released to the applicant or to the person from whom it was seized; that the tax as determined is excessive and that the amount of the determination be reduced.

(c) If the applicant disagrees with the Decision and Recommendation in whole or in part, the applicant may request an oral hearing before the Board. A request for an oral hearing may be denied on an application for administrative hearing. If an oral hearing is granted, the matter shall be scheduled for hearing as soon as practicable.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46303, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601.

Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, 60333.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 3: CLAIMS FOR REFUND

5230. PERSONS WHO MAY FILE A CLAIM FOR REFUND; LIMITATIONS ON CERTAIN CLAIMS.

(a) Any person, supplier, distributor, insurer, surplus line broker, user, or tax or fee payer who believes that it has overpaid a tax or fee, or interest or penalty thereon, or other refundable amount to the Board may file a claim for refund. An authorized representative may file a claim for refund on such persons' behalf.

(b) Motor Vehicle Fuel Tax Law. A claim for refund based upon the following grounds should be filed with the Controller and is not governed by this chapter:

(1) The motor vehicle fuel was purchased and used for a purpose other than operating motor vehicles on public highways in California.

(2) The motor vehicle fuel was exported for use outside of California.

(3) The motor vehicle fuel was sold to the armed forces of the United States for use in ships or aircraft, or for use outside of California in a manner that would qualify for an exemption under Revenue and Taxation Code section 7401.

(4) The motor vehicle fuel was purchased for and used in construction equipment, which is exempt from vehicle registration under the Vehicle Code.

(5) The claimant is a supplier who sold motor vehicle fuel to a consulate office or consulate employee under circumstances that would have entitled the supplier to an exemption under Revenue and Taxation Code section 7401, subdivision (a)(4).

(6) The claimant is a supplier that:

(A) Removed motor vehicle fuel from a rack and paid tax on that removal, or purchased tax-paid motor vehicle fuel outside the bulk transfer/terminal system; and

(B) Delivered the tax-paid motor vehicle fuel to another approved terminal from which the supplier subsequently removed the tax-paid motor vehicle fuel at the terminal rack and paid a second tax on the same amount of motor vehicle fuel.

(7) The claimant is a supplier who purchased tax-paid motor vehicle fuel in the bulk transfer/terminal system and subsequently removed the tax-paid motor vehicle fuel at the terminal rack, and paid tax upon the same amount of motor vehicle fuel twice.

(8) The claimant used tax-paid motor vehicle fuel to propel passenger carrying vehicles used for the transportation of persons for hire, compensation, or profit.

(9) The claimant paid tax attributable to the distribution of motor vehicle fuel for use or used in propelling a vessel operated by its owner on waters located on private property owned or controlled by it.

(c) Hazardous Substances Tax Law.

(1) All claims for refund filed under Revenue and Taxation Code section 43452 will be acknowledged. However, no determination will be made as to whether any substance is a hazardous or extremely hazardous waste. A claim for refund based upon such grounds will be forwarded to the Director of Toxic Substances Control for determination in accordance with Revenue and Taxation Code section 43452.

(2) A claim for refund required to be forwarded to the Director of Toxic Substances Control under paragraph (1) will not be considered until after the Director of Toxic Substances Control has made his or her determination.

(3) Childhood Lead Poisoning Prevention Fee.

(A) All claims for refund of the Childhood Lead Poisoning Prevention Fee will be acknowledged. A claim for refund of the Childhood Lead Poisoning Prevention Fee may be founded upon any grounds, including such grounds as:

(i) The petitioner's industry did not contribute in any manner to environmental lead contamination;

(ii) The petitioner's lead or lead containing product does not currently or did not historically result in quantifiable persistent lead contamination; or

(iii) The amount of the fee assessed does not reflect the petitioner's market share or is incorrectly computed.

(B) A claim for refund described in clauses (i), (ii), or (iii) of subparagraph (A) will not be acted upon until after the State Director of Health Services has acted upon the claimant's application for exemption from the fee or reassessment of the fee. Applications for exemption should be submitted to the State Department of Health Care Services in the manner provided in California Code of Regulations, title 17, section 33040. Applications for reassessment should be submitted to the State Department of Health Services in the manner provided in California Code of Regulations, title 17, section 33050.

(d) Covered Electronic Waste Recycling Fee. All claims for refund of the Covered Electronic Waste Recycling Fee will be acknowledged. However, no determination will be made as to whether an item is or is not a covered electronic device. Claims for refund based upon such grounds will be forwarded to the Department of Toxic Substances Control for determination in accordance with Public Resources Code section 42464.6.

(e) Water Rights Fee Law. A claim for refund filed under the Fee Collection Procedures Law that is based upon the assertion that the State Water Resources Control Board improperly or erroneously determined that a person or entity was required to pay a water rights fee or the amount of such fee will not be accepted. A claim for refund based upon these grounds should be directed to the State Water Resources Control Board. This prohibition does not apply if the determination has already been set aside by the State Water Resources Control Board or a court reviewing the determination.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6901, 6902, 8101, 8101.1, 8101.6, 8101.7, 8102, 8126, 8128, 9151, 9152, 12977, 12978, 30176, 30176.1, 30176.2, 30177, 30361, 30362, 32401, 32402, 32407, 38601, 38602, 40111, 40112, 41100, 41101, 43451, 43452, 45651, 45652, 46501, 46502, 50139, 50140, 55221, 55222, 60501, 60502, 60507, 60521, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5231. LIMITATION PERIOD FOR CLAIM FOR REFUND.

(a) A refund requested in a claim for refund cannot be approved, unless the claim for refund is filed within the time periods provided in this section.

(b) General Limitation Periods. In general, a claim for refund is timely if it is filed prior to the expiration of the last of the following time periods:

(1) Three years from the last day of the calendar month following the close of the reporting period for which the overpayment was made;

(2) Six months from the date the determination became final, if the overpayment was made under the notice of determination; or

(3) Six months from the date of the overpayment.

(c) Alcoholic Beverages Tax Law. Subdivision (b)(1) does not apply to claims for refund filed under the Alcoholic Beverage Tax Law. In lieu thereof, any such claim for refund is timely if filed within three years from the 15th day of the calendar month following the close of the period for which the overpayment being claimed was made.

(d) Cigarette and Tobacco Products Tax Law.

(1) Stamps and Meter Register Settings. Subdivision (b)(1) does not apply to claims for refund for overpayments made with regard to purchases of stamps or meter register settings. In lieu thereof, a claim for refund for an overpayment made with regard to a purchase of stamps or meter register settings is timely if filed within three years from the due date for the payment of the purchase for which the overpayment was made.

(2) Other Claims for Refund. Subdivision (b)(1) does not apply to claims for refund filed under the Cigarette and Tobacco Products Tax Law, which are not described in paragraph (1) of this subdivision. In lieu thereof, a claim for refund described in this paragraph (2) is timely if filed within three years from the 25th day after the close of the monthly period for which the overpayment being claimed was made.

(3) Exported Tobacco Products. Notwithstanding subdivision (b) and paragraphs (1) and (2) of this subdivision, claims for refund based upon the grounds that the tobacco products upon which the tax was paid were exported, must be filed within three months after the close of the calendar month in which the tobacco products were exported.

(e) Tax on Insurers Law. Subdivision (b)(1) does not apply to claims for refund filed under the Tax on Insurers Law. In lieu thereof, any such claim for refund is timely if filed within four years after April 1st of the year following the year for which the overpayment was made. A claim for refund filed under the Tax on Insurers Law may be filed in accordance with section 5233 or may be filed with the Commissioner of Insurance.

(f) Emergency Telephone Users Surcharge Law. Subdivision (b)(1) does not apply to claims for refund filed under the Emergency Telephone Users Surcharge Law. In lieu thereof, any such claim is timely if filed within three years after the last day of the second month following the close of the month for which the overpayment being claimed was made.

(g) Hazardous Substances Tax Law. Subdivision (b)(1) does not apply to claims for refund filed under the Hazardous Substances Tax Law. In lieu thereof, any such claim is timely if filed within three years after the date taxes were due and payable for the period for which the overpayment was made.

(h) Fee Collection Procedures Law, Integrated Waste Management Fee Law, Underground Storage Tank Maintenance Fee Law, and Oil Spill Response, Prevention, and Administration Fees Law. Subdivision (b)(1) does not apply to claims for refund filed under the Fee Collection Procedures Law, Integrated Waste Management Fee Law, Underground Storage Tank Maintenance Fee Law, and Oil Spill Response, Prevention, and Administration Fees Law. In lieu thereof, any such claim is timely if filed within three years after the due date of the payment for the period for which the overpayment was made.

(i) Diesel Fuel Tax Law. Subdivision (b) does not apply to claims for refund filed under Revenue and Taxation Code section 60501 (diesel fuel lost sold or removed) or 60502 (ultimate vendor claims). In lieu thereof, any such claim for refund is timely if filed within three years from the date of the purchase of the diesel fuel to which the claim relates, or, if the tax was not invoiced at the time of the purchase of the diesel fuel, six months after the receipt of an invoice for the tax, whichever period expires later.

(j) Waivers.

(1) In addition, where a claimant has executed a waiver extending the statute of limitation for assessment applicable to a reporting period, any claim for refund filed with regard to that reporting period during the time agreed to in the waiver will be timely filed.

(2) This subdivision regarding waivers does not apply to claims for refund filed under the Tax on Insurers Law or the Emergency Telephone Users Surcharge Law, or claims described in subdivision (i) of this section.

(k) Financially Disabled Individuals.

(1) The periods described in subdivisions (b), (c), (d)(2), (f), (g), and (h) of this section are suspended during any period of an individual's life that the individual is financially disabled.

(2) An individual is financially disabled if:

(A) The individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment of the individual that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months; and

(B) Proof of the individual's impairment is provided.

(3) An individual is not financially disabled during any period that the individual's spouse or any other person is authorized to act on behalf of the individual in financial matters.

(4) This subdivision does not apply to claims for refund filed under the Tax on Insurers Law or claims for refund of overpayments made with respect to purchases of stamps or meter register settings filed under the Cigarette and Tobacco Products Tax Law.

(l) Levies and Liens. A claim for refund for an overpayment of a sales or use tax collected by means of levy, through the use of liens, or by other enforcement procedures is timely if filed within three years of the overpayment.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6902, 6902.3, 6902.4, 8128, 8128.1, 9152, 9152.1, 12978, 30178, 30178.1, 30362, 30362.1, 32402, 32402.1, 32407, 38602, 38602.5, 40112, 40112.1, 41101, 41101.1, 43452, 43452.1, 45652, 45652.1, 50140, 50140.1, 55222, 55222.1, 60507, 60522, 60522.1.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5231.5. FAILURE TO FILE TIMELY CLAIM FOR REFUND.

A claim for refund must be reviewed to determine whether it is timely. The claimant's failure to file a claim within the applicable time period, as provided for in section 5231, is a waiver of any demand against the State on account of the overpayment.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6905, 8128, 9152, 12980, 30178, 30178.1, 30364, 32403, 38604, 40114, 41103, 43453, 45653, 46504, 50141, 55223, 60507, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5232. GENERAL CONTENTS OF CLAIMS FOR REFUND.

(a) All Claims. Every claim for refund must be in writing, must be signed by the claimant or the claimant's authorized representative, and must include:

- (1) The specific grounds or reasons upon which the claim is founded.
- (2) The reporting period with regard to which the claimant made the overpayment being claimed as a refund.
- (3) The amount of the refund being claimed, if known.
- (4) Information necessary to contact the claimant or claimant's authorized representative.

(b) Sales and Use Tax Claims. Claims for refund filed under the Sales and Use Tax Law may also break down the claimed refund into state, local, and district tax amounts.

(c) Multiple Claims. If a single claim for refund is filed for more than one reporting period, the claimant may separately state the information required by subdivisions (a) and (b) for the periods of the claim.

(d) Supporting Documentation. Claims for refund may be accompanied by whatever copies of supporting written arguments and documentary evidence is necessary to verify and approve the claim. Failure to include such information along with a claim may delay its processing.

(e) Forms. The use of a completed form provided by the Board for use as a claim for refund will satisfy the requirements of this section (other than subdivision (d)). However, this subdivision does not require taxpayers to use a form.

(f) Returns and Payments. In no event may the claimant deduct amounts included in a claim for refund from the amount required to be reported and paid for any reporting period.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6904, 8129, 9153, 12979, 30176, 30176.1, 30176.2, 30177, 30363, 32402, 32402.1, 32407, 38603, 40113, 41102, 43452, 45652, 46503, 50140, 55222, 60501, 60502, 60505, 60505.5, 60523.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5232.4. CONTENTS OF CLAIMS FOR REFUND UNDER DIESEL FUEL TAX LAW.

Notwithstanding section 5232, claims for refund of payments made with respect to the Diesel Fuel Tax Law must be prepared and filed in the following manner:

(a) Diesel Fuel that is Lost, Sold, or Removed.

(1) A claim for refund must satisfy the requirements of paragraph (2) if it is based upon the grounds that:

(A) Tax was imposed on the diesel fuel to which the claim relates; and

(B) The claimant bought or produced the diesel fuel to which the claim relates and the same diesel fuel was:

(i) Used for purposes other than operating motor vehicles upon the public highways of California;

(ii) Exported for use outside of California;

(iii) Used in construction equipment that is exempt from registration under the Vehicle Code;

(iv) Used in the operation of a motor vehicle on any highway that is under the jurisdiction of the United States Department of Agriculture;

(v) Used in any motor vehicle owned by any county, city and county, city, district, or other political subdivision or public agency;

(vi) Sold by a supplier to any consulate office or consulate employee;

(vii) Lost in the ordinary course of handling, transportation, or storage;

(viii) Sold to the United States, its agencies, or instrumentalities;

(ix) Sold to a train operator for use in a diesel-powered train or other off-highway use; or

(x) Removed from an approved terminal at the terminal rack.

(2) A claim for refund based upon the grounds described in paragraph (1) must:

(A) Be prepared and filed on a form prescribed by the Board.

(B) Be accompanied by the original invoice showing the purchase, or, if no original invoice was created, an electronic invoice and the original bill of lading or fuel manifest.

(C) Include the name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase.

(D) Include the claimant's statement that the diesel fuel covered by the claim did not contain visible evidence of dye.

(E) Include a statement by the person who sold the diesel fuel to the claimant that the diesel fuel did not contain visible evidence of dye.

(F) Identify the total amount of diesel fuel covered by the claim.

(G) Describe the use made of the diesel fuel.

(H) Be accompanied by proof that the diesel fuel was exported, if the claim is based upon the grounds that the diesel fuel was exported.

(3) Claims for refund based upon the grounds provided for in paragraph (1) must be filed on a calendar year basis, except that claims for refund of more than \$750 may be filed for a quarter of a calendar year.

(b) Ultimate Vendors of Diesel Fuel. A claim for refund based upon the grounds that the claimant was an ultimate vendor that sold tax-paid diesel fuel to an ultimate purchaser for use on a farm for farming purposes, or use in an exempt bus operation may not be filed for an amount less than \$200 or a period shorter than one week and must:

(1) Be prepared and filed on a form prescribed by the Board.

(2) Contain the claimant's permit number.

(3) Include the name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase.

(4) Include the name, address, telephone number, and federal taxpayer identification number of each farmer or the permit number of each exempt bus operator that bought the diesel fuel from the claimant and the number of gallons of diesel fuel the claimant sold to each.

(5) Include the claimant's statement that the diesel fuel covered by the claim did not contain evidence of visible dye.

(6) Identify the total amount of diesel fuel covered by the claim.

(7) Include the claimant's statement that it has an unexpired exemption certificate described in Revenue and Taxation Code section 60503 and has no reason to believe the certificate is false.

(8) Include the claimant's statement that the amounts claimed have not been refunded to the claimant previously.

(c) Persons filing claims for refund under this section must use the proper form prescribed by the Board and should contact the Fuel Taxes Division for the appropriate form.

(d) Other Claims. Claims for refund under the Diesel Fuel Tax Law that are not described in subdivision (a) or (b) may be filed in the manner provided for in section 5232.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 60601.

Reference: Revenue and Taxation Code sections 60501, 60502, 60505, 60505.5, 60523.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5232.6. REQUIREMENTS FOR CLAIMS FOR REFUND REGARDING LOST, UNMARKETABLE OR CONDEMNED ALCOHOLIC BEVERAGES.

A claim for refund based upon the grounds provided for in Revenue and Taxation Code section 32407 must satisfy the requirements of California Code of Regulations, title 18, section 2553.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 32451.

Reference: Revenue and Taxation Code section 32407.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5232.8. ADDITIONAL REQUIREMENTS FOR CLAIMS FOR REFUND FILED UNDER THE CIGARETTE AND TOBACCO PRODUCTS TAX LAW.

In addition to the requirements of section 5232, claims for refund of amounts paid with regard to purchases of stamps or meter register settings must satisfy the requirements of and be prepared and filed on any form required by California Code of Regulations, title 18, sections 4061 through 4065. All other claims for refund filed under the Cigarette and Tobacco Products Tax Law are not required to comply with this additional requirement. Contact the Excise Taxes and Fees Division for the appropriate form.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 30451.

Reference: Revenue and Taxation Code sections 30176, 30176.1, 30176.2, 30177, 30363.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5233. FILING CLAIMS FOR REFUND.

(a) The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) for the filing of claims for refund and related documents. A claim for refund or related document may be filed electronically under this section if an electronic copy of such document is transmitted to the appropriate section or group identified in subdivision (b) or (c) for the tax or fee law at issue in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(b) Claims for refund and related documents filed under the Sales and Use Tax Law may also be mailed to the:

Audit Determination and Refund Section, MIC: 39
Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0039

(c) Other claims for refund and supporting documents may be mailed to the address provided in this subdivision for the particular tax or fee law at issue:

(1) Hazardous Substances Tax Law (Except Childhood Lead Poisoning Prevention Fee), Covered Electronic Waste Recycling Fee, Integrated Waste Management Fee Law, Tire Recycling Fee, Occupational Lead Poisoning Prevention Fee, Water Rights Fee Law, and Marine Invasive Species Fee Collection Law.

Environmental Fees Division, MIC: 57
Audit Unit
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0057

(2) Tax on Insurers Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge, and Natural Gas Surcharge.

Excise Taxes Division, MIC: 56
Refund and Petition Group
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0056

(3) Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Diesel Fuel Tax Law, and Childhood Lead Poisoning Prevention Fee.

Fuel Tax Division, MIC: 30
Refund Group
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0030

(4) Timber Yield Tax Law.

Timber Yield Tax Section, MIC: 60
State Board of Equalization
P. O. Box 942879
Sacramento, CA 94279-0060

(d) A claim for refund and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California.

(e) The Chief of Board Proceedings may reject any claim for refund or related document filed in any manner that is not authorized by this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6902, 8128, 9152, 12978, 30178, 30178.1, 30362, 32402, 32402.1, 32407, 38602, 40112, 41101, 43452, 45652, 46502, 50140, 55222, 60501, 60502, 60507, 60521, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5234. ASSIGNMENT AND ACKNOWLEDGMENT OF CLAIM FOR REFUND.

Once a claim for refund is received, it will be assigned to the appropriate section or group listed in section 5233 based upon the type of tax or fee at issue, and Board Staff from the assigned section will promptly send the claimant a letter acknowledging the claim, which will contain the contact information for the assigned section or group.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6901, 6902, 8126, 8128, 9151, 9152, 12977, 12978, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 32401, 32402, 32402.1, 32407, 38601, 38602, 40111, 40112, 41100, 41101, 43451, 43452, 45651, 45652, 46501, 46502, 50139, 50140, 55221, 55222, 60501, 60502, 60507, 60521, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5234.5. REVIEW PROCESS FOR CLAIMS FOR REFUND AND REQUESTS FOR ADDITIONAL INFORMATION.

Claims for refund are generally reviewed in the order that they are received. If additional documentary evidence is needed to verify and approve a claim, Board Staff from the assigned section or group will contact the claimant and request such information. The failure to provide such information upon request may result in a denial of the claim for refund.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401, 32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60506, 60507, 60521, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5235. ACTION ON THE CLAIM FOR REFUND.

(a) Once a claim for refund has been reviewed, Board Staff from the assigned section will recommend that the claim be:

- (1) Granted in its entirety.
- (2) Granted in part and denied in part.
- (3) Denied in its entirety.

(b) If Board Staff in the assigned section or group recommends that a claim be granted in its entirety, Board Staff will:

(1) Send the claimant a notice of refund showing the amount to be refunded (subject to the requirements of section 5237); and

(2) Have a refund warrant prepared and sent to the claimant after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(c) If Board Staff in the assigned section recommends that any claim be denied, Board Staff will send the claimant a letter containing its recommendation and an explanation of its reasons for making such recommendation.

(d) A claimant receiving a letter described in subdivision (c) may choose to agree or disagree with the recommendation in whole or in part.

(1) If the claimant agrees with a recommendation to grant a partial refund, Board Staff in the appropriate section will send the claimant a notice of refund showing the partial refund (subject to the requirements of section 5237). Thereafter, Board Staff in the assigned section or group will have a refund warrant prepared and sent to the claimant, but only after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(2) If the claimant agrees with a recommendation to deny a refund in its entirety, Board Staff in the assigned section will send the claimant a notice of denial of claim for refund.

(3) If the claimant disagrees with a proposed recommendation to grant a partial refund or deny a refund in its entirety, the claimant may request that the recommendation be reconsidered in an:

- (A) Appeals conference conducted under article 6 of this chapter; and/or
- (B) Oral hearing before the Board.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401, 32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5236. DISCRETION TO GRANT OR DENY APPEALS CONFERENCES AND ORAL HEARINGS ON CLAIMS FOR REFUND.

A request for an appeals conference conducted under article 6 of this chapter or oral hearing before the Board may be denied on a claim for refund. Requests will be liberally granted, however, requests may be denied if the claimant has already been provided with an appeals conference and oral hearing on the same issue, and has not submitted any additional arguments or evidence.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401, 32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5237. BOARD APPROVAL REQUIRED FOR REFUNDS OVER \$50,000.

(a) If Board Staff in the assigned section or group determines that a refund in excess of \$50,000 should be granted, the recommendation for the proposed refund must be submitted to the Board.

(b) Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether a refund is warranted and in what amount, and will do so without further documentation or testimony from the claimant.

(c) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program are exempt from the requirements of subdivision (a).

(d) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$50,000 must be submitted to the Executive Director for approval. If the Executive Director approves, Board Staff in the assigned section will send the claimant a notice of refund showing the amount to be refunded, and shall have a refund warrant prepared and sent to the claimant.

(e) Diesel Fuel Tax Law. Claims for refund filed under Revenue and Taxation Code sections 60501 and 60502 may be approved without complying with the requirements of this section.

(f) If Board Staff in the assigned section determines that a refund in excess of \$50,000 should be denied, and the claimant has not disagreed with such determination by requesting an appeals conference with the Appeals Division or oral hearing before the Board, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Board for approval as provided in subdivision (a).

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, 60521.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5238. CREDITS AND OFFSETS MAY REDUCE REFUNDS.

(a) The amount shown as a refund on a notice of refund is the amount due to the claimant. However, that amount will not be paid directly to the claimant if it is subject to being credited or offset against other amounts owed by the claimant, which are then due and payable.

(b) Any portion of a claimant's refund remaining after the refund has been credited or offset against other amounts that are then due and payable from the claimant will be refunded to the claimant and paid to the claimant.

(c) Diesel Fuel Tax Law. Credits claimed on a return in lieu of claiming a refund under Revenue and Taxation Code sections 60501 and 60502 are not subject to the requirements of this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6483, 6512, 6901, 8126, 8778, 8802, 9151, 12426, 12977, 30176, 30176.1, 30176.2, 30177, 30203, 30222, 30361, 38413, 38422, 38601, 40073, 40082, 40111, 41072, 41081, 41100, 43201, 43451, 45201, 45651, 46201, 46252, 46501, 50113, 50139, 55001, 55221, 60521.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5239. COMBINED CLAIMS FOR REFUND ON BEHALF OF CLASS OF TAXPAYERS.

(a) This section only applies to combined claims for refund of the Sales and Use Tax, including State-administered local sales, transactions, and use taxes.

(b) Procedures Required of Class Representative. The representative claiming a refund on behalf of members of a class must establish:

(1) It is more beneficial to the class and to the State to proceed as a combined claim for refund rather than individually.

(2) The existence and the composition of the class, including:

(A) A description of the members sufficient to identify the persons making up the class.

(B) The approximate number of persons in the class.

(C) The manner in which and the time when the class members shall be identified and notified of the pendency of the combined claim.

(3) The issues of law and fact that are or are not common to all class members, and the approximate number of class members affected by each issue that is not common to all.

(4) The representative's written authority to act as representative for each class member, which authority must authorize Board Staff to release to the representative any confidential information in the Board's files that may be required in connection with the claim. This statement may include a separate claim for refund by the class member or may state that the class member joins in the combined claim.

(5) The representative is a member of the class and when and how the representative became a member. In addition, any unique legal or factual issues pertaining to the representative's claim and any differences between the representative's status as a class member and that of any other class member shall be described.

(6) The representative can fairly and adequately protect the interests of each member of the class and the representative's interests are not antagonistic to members of the class.

(7) When requested by Board Staff, that each member of the class has been notified of the pendency of the claim and each member has had a reasonable opportunity to join in or be excluded from the combined claim.

(c) Action to be Taken by Board Staff.

(1) If Board Staff finds that the claim is a proper combined claim it will, to the extent possible, act upon the claim in the same manner that it would act on any other claim. If Board Staff finds that the claim is not a proper combined claim, it will act only on claims by individual members and notify the representative that the claim is not valid as to others. In determining the amount of any refund due to any member of the class, the refund is limited to the amount of tax overpayment by that member under the tax law under which the claim was filed.

(2) Before a refund will be made to any member of the class, the amount of the tax overpayment by the member must be established and the representative or member must furnish or make available to Board Staff all contracts, documents, or records (or copies thereof) necessary to verify the overpayment and the amount thereof. If such contracts, documents, or records are not presented to or made available to Board Staff, the representative or member, will be deemed to have failed to exhaust the administrative remedies.

(d) Effect of Action on Combined Claims.

(1) Failure to commence a court action within 90 days after the mailing of the notice of the Board's action on a refund claim as provided in the tax law under which the claim was filed constitutes a waiver of any demand against the state on account of alleged overpayments. This waiver, however, does not apply to persons who have not previously been notified of the claim, or who have notified Board Staff that they desire to be excluded from the combined claim. Nor does the waiver apply to persons involved in a claim to the extent it has been declared invalid as distinguished from persons as to whom a claim has been denied.

(2) A judgment in any court action filed with respect to the denial of any claim is res judicata as to the claimant's tax liability or overpayments for the period involved.

Note: Authority cited: Government Code section 15606(a); Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262 and 7270.

Reference: Revenue and Taxation Code sections 6814, 6904 and 6932.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

**ARTICLE 4A: REQUESTS FOR INNOCENT SPOUSE RELIEF
UNDER THE SALES AND USE TAX LAW**

5240. PERSONS WHO MAY FILE, CONTENTS OF, AND MANNER OF FILING REQUESTS FOR INNOCENT SPOUSE RELIEF (SALES AND USE TAX, INCLUDING STATE-ADMINISTERED LOCAL SALES, TRANSACTIONS, AND USE TAXES).

(a) Who May Request Relief. A divorced or separated individual that has a sales or use tax liability and meets the requirements of California Code of Regulations, title 18, section 1705.1, subdivision (a), may file a request for innocent spouse relief with the Board.

(b) Request Requirements. A request for innocent spouse relief must be:

- (1) In writing.
- (2) Signed and dated by the individual requesting relief.
- (3) Specifically request innocent spouse tax relief.
- (4) Identify the tax from which relief is sought.

(5) Contain all of the information requested on Form BOE-682-A, including a specific explanation as to why the individual requesting relief believes he or she should not be held responsible for the tax liability at issue.

(c) Use of Forms. A request for innocent spouse relief prepared and filed on a completed Form BOE-682-A satisfies the requirements of subdivision (b).

(d) Limitation Period. A request for innocent spouse relief must be filed with the Board within the time periods provided in California Code of Regulations, title 18, section 1705.1, subdivision (e).

(e) Filing Requests. The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) for the filing of request for innocent spouse relief and related documents. A request for innocent spouse relief or related document may be filed electronically under this section if a copy of the document is transmitted to the Offer in Compromise Section in accordance with instructions provided on the Board's website at www.boe.ca.gov. Requests for innocent spouse relief may be mailed to the Offer in Compromise Section at the following address:

Offer in Compromise Section, MIC: 52
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0052

A request for innocent spouse relief and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California. The Chief of Board Proceedings may reject any request for innocent spouse relief or related document filed in any manner that is not authorized by this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051.

Reference: Revenue and Taxation Code section 6456, 7202, 7203, 7261, 7262, 7270.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5241. ACKNOWLEDGEMENT AND REVIEW OF REQUESTS FOR INNOCENT SPOUSE RELIEF.

(a) Assignment and Review. Once received, a request for innocent spouse relief will be assigned to Board Staff in the Offer in Compromise Section who will:

(1) Send the individual requesting relief an acknowledge letter containing the contact information for the Offer in Compromise Section.

(2) Inform the non-requesting spouse that the request has been filed and the basis for the request, and permit the non-requesting spouse to submit information to support or counter the request.

(3) Evaluate the merits of the request.

(4) Request additional documentation from the individual requesting relief, if necessary.

(b) Granted Request for Innocent Spouse Relief. If Board Staff in the Offer in Compromise Section approves a request for innocent spouse relief, Board Staff will prepare and send the individual who requested relief a letter explaining the relief that was granted.

(c) Denied Request for Innocent Spouse Relief. If Board Staff in the Offer in Compromise Section denies a request for innocent spouse relief, Board Staff will:

(1) Prepare and send the individual requesting relief a letter explaining why the request was denied; and

(2) If it appears that the individual requesting relief might be eligible for other equitable relief as provided in California Code of Regulations, title 18, section 1705.1, subdivision (h), Board Staff in the Offer in Compromise Section will include a questionnaire and financial statement for the individual requesting relief to complete and return.

(d) Requests for Other Equitable Relief. If the individual requesting relief returns a completed questionnaire and financial statement, Board Staff in the Offer in Compromise Section will review the documents to see if other equitable relief is warranted using the factors provided in California Code of Regulations, title 18, section 1705.1, subdivision (h). Once this review is completed, Board Staff will mail the individual requesting relief a letter granting or denying equitable relief and explaining why such relief was granted or denied.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051.

Reference: Revenue and Taxation Code section 6456, 7202, 7203, 7261, 7262, 7270.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5242. REQUESTS FOR RECONSIDERATION BY THE BOARD.

(a) If a request for other equitable relief is denied, the individual requesting relief may request that the denial be reconsidered by the Board at an oral hearing as provided in California Code of Regulations, title 18, section 1705.1, subdivision (h). A request for an oral hearing may be denied on a request for other equitable relief, however, requests will be liberally granted.

(b) An oral hearing may be requested by following the instructions contained on the denial letter described in section 5241, subdivision (d).

(c) If a request for an oral hearing is granted, the individual requesting relief may be required to participate in an appeals conference with the Appeals Division prior to the oral hearing.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051.

Reference: Revenue and Taxation Code section 6456, 7202, 7203, 7261, 7262, 7270.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

**ARTICLE 4B: SUCCESSOR'S REQUEST FOR RELIEF OF PENALTY
UNDER THE SALES AND USE TAX LAW**

5243. SUCCESSOR'S REQUEST FOR RELIEF.

A successor requesting relief from penalties as provided in California Code of Regulations, title 18, section 1702, subdivision (d)(2), may include its request for relief in its petition for reconsideration or amend its previously filed petition to include such request. If the successor has not filed a petition for reconsideration and does not intend to do so, the successor may file a request for relief from penalties without filing a petition for reconsideration. Every successor's request for relief filed under this section must include a written statement signed under penalty of perjury stating the facts upon which the claim for relief is based, regardless of whether the request is included in a petition for reconsideration. Such request for relief must be filed in accordance with the procedures in article 2A of this chapter for filing a petition for redetermination under the Sales and Use Tax Law.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 7051.

Reference: Revenue and Taxation Code section 6814.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 4C: OTHER REQUESTS FOR RELIEF OF PENALTIES AND INTEREST

**5244. NO INDEPENDENT RIGHT TO ORAL BOARD HEARING ON A REQUEST FOR RELIEF;
APPLICABLE PROCEDURES FOR REQUESTS INCLUDED IN PETITIONS OR CLAIMS; AND
ASSOCIATION WITH RELATED PETITIONS OR CLAIMS.**

(a) In general, a person filing a request for relief described in this article does not have a right to an oral hearing before the Board on such request. A request for an oral hearing on a request for relief may be granted or denied.

(b) If a request for relief described in this article is included in a timely filed petition for redetermination or petition for reconsideration, or claim for refund, the procedures applicable to such petitions or claims apply to the request for relief. A request for relief included in a petition for redetermination or petition for reconsideration, or claim for refund must satisfy the requirements of this article applicable to such request.

(c) Any request for relief filed under this article may be associated with any pending petition for redetermination, petition for reconsideration, or claim for refund filed by the same person and covering the same periods as the request for relief.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 8877, 8878, 8878.1, 8879, 12636, 12637, 30282, 30283, 30283.5, 30284, 32255,

32256, 32256.5, 32257, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5245. AUTHORITY TO GRANT RELIEF FOR REASONABLE CAUSE AND CONTENTS OF REQUESTS FOR RELIEF FOR REASONABLE CAUSE.

(a) Authority to Grant Relief. If a person's failure to make a timely return, report, payment, or prepayment, or failure to comply with a written notice issued under Revenue and Taxation Code section 6074, subdivision (a) is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the following penalties imposed under:

(1) Sales and Use Tax Law. Revenue and Taxation Code sections 6074, 6476, 6477, 6479.3, 6480.4, 6480.8, 6511, 6565, 6591, 7051.2, 7073, and 7074.

(2) Motor Vehicle Fuel Tax Law. Revenue and Taxation Code sections 7655, 7659.5, 7659.6, 7659.9, 7660, 7705, 7713, 7726, and 7727.

(3) Use Fuel Tax Law. Revenue and Taxation Code sections 8760, 8801, 8854, and 8876.

(4) Tax on Insurers Law. Revenue and Taxation Code sections 12258, 12282, 12287, 12631, 12632, and 12633.

(5) Cigarette and Tobacco Products Tax Law. Revenue and Taxation Code sections 30171, 30190, 30221, 30264, and 30281.

(6) Alcoholic Beverage Tax Law. Revenue and Taxation Code sections 32252, 32260, 32291, and 32305.

(7) Timber Yield Tax Law. Revenue and Taxation Code sections 38421 and 38451.

(8) Energy Resources Surcharge Law. Revenue and Taxation Code sections 40067, 40081, 40096, and 40101.

(9) Emergency Telephone Users Surcharge Law. Revenue and Taxation Code sections 41060, 41080, 41090, and 41095.

(10) Hazardous Substances Tax Law. Revenue and Taxation Code sections 43155, 43170, and 43306.

(11) Integrated Waste Management Fee Law. Revenue and Taxation Code sections 45153, 45160, and 45306.

(12) Oil Spill Response, Prevention, and Administration Fees Law. Revenue and Taxation Code sections 46154, 46154.1, 46160, 46251, and 46356.

(13) Underground Storage Tank Maintenance Fee Law. Revenue and Taxation Code sections 50112, 50112.7, and 50119.

(14) Fee Collection Procedures Law. Revenue and Taxation Code sections 55042, 55050, and 55086.

(15) Diesel Fuel Tax Law. Revenue and Taxation Code sections 60207, 60250, 60301, 60338, 60355, 60361, and 60361.5.

(b) Contents of Request.

(1) A request for relief based upon reasonable cause and circumstances beyond the person's control must be in writing, identify the penalty from which relief is sought, state the specific facts upon which the request is based, and be signed by the person requesting relief under penalty of perjury.

(2) Form BOE-735, Request for Relief of Penalty, may be used to prepare and submit a request for relief under this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6074, 6592, 7657, 8877, 12636, 30282, 32255, 38452, 40102, 41096, 43157, 45155, 46156, 50112.2, 55044, 60209.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5246. AUTHORITY TO GRANT RELIEF DUE TO UNREASONABLE ERROR OR DELAY AND CONTENTS OF REQUESTS FOR RELIEF DUE TO UNREASONABLE ERROR OR DELAY.

(a) A person may be relieved of interest imposed under the tax and fee laws described in subdivision (b), if the person was charged interest due to:

(1) Unreasonable error or delay:

(A) By Board Staff acting in his or her official capacity; and

(B) No significant aspect of the error or delay is attributable to an act or failure to act by the tax or fee payer.

(2) An error by an employee of the Department of Motor Vehicles in calculating the use tax due on a vehicle or vessel registered with the Department of Motor Vehicles.

(b) This section applies to interest imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

(c) A request for relief of interest based upon the ground set forth in subdivision (a) of this section must:

(1) Be in writing;

(2) Specifically identify the error or delay that caused the person requesting relief to be charged interest;

(3) Specifically identify the period for which interest relief is sought; and

(4) Be signed by the person requesting relief under penalty of perjury.

(d) Form BOE 735-A, Request for Relief of Interest Unreasonable Error or Delay, may be used to prepare and submit a request for relief under this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6593.5, 7658.1, 8878.5, 30283.5, 32256.5, 38455, 40103.5, 41097.5, 43158.5, 45156.5, 46157.5, 50112.4, 55046, 60212.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5247. AUTHORITY TO GRANT RELIEF DUE TO REASONABLE RELIANCE ON WRITTEN ADVICE AND CONTENTS OF REQUESTS FOR RELIEF DUE TO REASONABLE RELIANCE ON WRITTEN ADVICE.

(a) A person may be relieved from liability for the payment of a tax or fee imposed under the tax and fee laws identified in subdivision (c), including any penalties and interest added thereto, where the liabilities resulted from the person's failure to make a timely report, return or payment and such failure is found to be due to reasonable reliance on:

(1) Written advice given under the conditions set forth in California Code of Regulations, title 18, section 1705, subdivision (b) or section 4902, subdivision (b); or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in California Code of Regulations, title 18, section 1705, subdivision (c) or section 4902, subdivision (c); or

(3) Written advice given in a prior audit of that person under the conditions set forth in California Code of Regulations, title 18, section 1705, subdivision (d) or 4902, subdivision (d).

(b) Written advice may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person.

(c) This section applies to taxes and fees imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fee Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and the Diesel Fuel Tax Law.

(d) A request for relief due to reasonable reliance upon written advice must:

- (1) Be in writing;
- (2) Include the specific facts upon which the request for relief is based;
- (3) Be signed by the person requesting relief under penalty of perjury; and
- (4) Include an attached copy of the person's written request for written advice and a copy of the written advice relied upon.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6596, 7657.1, 8879, 30284, 32257, 38454, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, 60210.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5248. AUTHORITY TO GRANT RELIEF DUE TO DISASTER AND CONTENTS OF REQUESTS FOR RELIEF DUE TO DISASTER.

(a) If a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of interest imposed under:

- (1) Sales and Use Tax Law. Revenue and Taxation Code sections 6459, 6480.4, 6480.8, 6513, 6591, and 6592.5.
- (2) Motor Vehicle Fuel Tax Law. Revenue and Taxation Code sections 7655, 7656, 7659.9, 7661, and 7706.
- (3) Use Fuel Tax Law. Revenue and Taxation Code sections 8754, 8760, 8803, and 8876.
- (4) Tax on Insurers Law. Revenue and Taxation Code sections 12258, 12287, 12307, 12631, and 12632.
- (5) Cigarette and Tobacco Products Tax Law. Revenue and Taxation Code sections 30815, 30190, 30223, and 30281.
- (6) Alcoholic Beverage Tax Law. Revenue and Taxation Code sections 32252, 32253, 32260, and 32291.
- (7) Timber Yield Tax Law. Revenue and Taxation Code sections 38405, 38423, and 38451.
- (8) Energy Resources Surcharge Law. Revenue and Taxation Code sections 40065, 40067, 40083, and 40101.
- (9) Emergency Telephone Users Surcharge Law. Revenue and Taxation Code sections 41054, 41060, 41082, and 41095.
- (10) Hazardous Substances Tax Law. Revenue and Taxation Code sections 43154, 43155, 43170, and 43201.
- (11) Integrated Waste Management Fee Law. Revenue and Taxation Code sections 45152, 45153, 45160, and 45201.
- (12) Oil Spill Response, Prevention, and Administration Fees Law. Revenue and Taxation Code sections 46153, 46154, 46160, and 46253.

(13) Underground Storage Tank Maintenance Fee Law. Revenue and Taxation Code sections 50111, 50112, and 50112.7.

(14) Fee Collection Procedures Law. Revenue and Taxation Code sections 55041, 55042, 55050, and 55061.

(15) Diesel Fuel Tax Law. Revenue and Taxation Code sections 60207, 60208, 60250, 60302, and 60339.

(b) A request for relief of interest due to a disaster must:

- (1) Be in writing;
- (2) Identify the disaster due to which relief is sought;
- (3) Identify the period for which relief is sought; and
- (4) Be signed by the person requesting such relief under penalty of perjury.

(c) Form BOE-27, Penalty and Interest Relief for Disaster Victims, may be used to prepare and submit a request for relief under this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6593, 7658, 8878, 12637, 30283, 32256, 38453, 40103, 41097, 43158, 45156, 46157, 50112.3, 55046.5, 60211.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5249. FILING REQUESTS FOR RELIEF.

(a) A request for relief of an unpaid amount may be filed in the manner provided in section 5216 for the filing of a petition for redetermination concerning the same tax or fee law at issue in the request for relief.

(b) A request for relief of a previously paid amount may be filed in the manner provided in section 5233 for the filing of a claim for refund concerning the same tax or fee law at issue in the request for relief.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 8877, 8878, 8878.1, 8879, 12636, 12637, 30282, 30283, 30283.5, 30284, 32255, 32256, 32256.5, 32257, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5249.4. ASSIGNMENT AND ACKNOWLEDGEMENT OF REQUESTS FOR RELIEF.

(a) Sales and Use Tax Law.

(1) Generally, a request for relief of an unpaid amount filed under the Sales and Use Tax Law will be assigned to and reviewed by Board Staff in the Petitions Section. However, a request for relief of an amount included in a return, will be assigned to and reviewed by Board Staff in the Return Analysis Section regardless of whether the amount is paid.

(2) A request for relief of a previously paid amount filed under the Sales and Use Tax Law may be treated as a claim for refund, and assigned to and reviewed by Board Staff in the Audit Determination and Refund Section under the procedures contained in article 3 of this chapter.

(b) Special Taxes.

(1) A request for relief filed under any tax or fee law governed by this chapter (other than the Sales and Use Tax Law), will be assigned to and reviewed by Board Staff in the appropriate section responsible for the particular tax or fee law concerned.

(2) If the request for relief concerns previously paid amounts, the request will be treated as a claim for refund and assigned to and reviewed by Board Staff in the appropriate section under the procedures contained in article 3 of this chapter.

(c) Once the request for relief is assigned, the assigned Board Staff will promptly send the person requesting relief an acknowledgement letter containing the contact information for the assigned section, which may include a request for additional information.

(d) This section does not apply to requests for relief included in a petition for redetermination, petition for reconsideration, or claim for refund that are reviewed in accordance with the procedures applicable to such petitions or claims.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 8877, 8878, 8878.1, 8879, 12636, 12637, 30282, 30283, 30283.5, 30284, 32255, 32256, 32256.5, 32257, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5249.6. REVIEWING REQUESTS FOR RELIEF.

(a) The assigned Board Staff will review a request for relief to:

- (1) Determine if the request satisfies the requirements of this article 4C; and
- (2) Determine if relief is warranted.

(b) In reviewing a request for relief, the assigned Board Staff may request additional information from the person requesting relief.

(c) Once the review is completed, the assigned Board Staff may determine that:

- (1) No relief is warranted;
- (2) Partial relief is warranted; or
- (3) Full relief is warranted.

(d) Once the determination in subdivision (c) is made, the assigned Board Staff shall prepare and mail the person requesting relief a letter containing his or her decision and an explanation thereof.

(e) If the person requesting relief disagrees with the assigned Board Staff's decision, the person requesting relief may request reconsideration of the decision by the Deputy Director of the Sales and Use Tax or Special Taxes Department, as appropriate. Thereafter, the Deputy Director responsible for the tax or fee law concerned will prepare and mail the person requesting reconsideration a letter containing his or her decision on the request for reconsideration.

(f) If the person requesting relief disagrees with the Deputy Director's decision under subdivision (e), the person may request an oral hearing before the Board. While a person requesting relief under this section does not have a right to an oral hearing before the Board, a request for an oral hearing on a request for relief may be granted. If a request for an oral hearing is granted, the Board may require that the person requesting relief participate in an appeals conference conducted under article 6 of this chapter prior to the oral hearing.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 8877, 8878, 8878.1, 8879, 12636, 12637, 30282, 30283, 30283.5, 30284, 32255, 32256, 32256.5, 32257, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 5: CLAIMS (INQUIRIES) OF INCORRECT OR NON-DISTRIBUTION OF LOCAL AND DISTRICT TAXES

5250. FILING AND REVIEWING CLAIMS AND INQUIRIES REGARDING INCORRECT OR NON-DISTRIBUTION OF LOCAL AND DISTRICT TAXES.

(a) A claim or inquiry regarding the incorrect or non-distribution of local or district taxes must meet the requirements of California Code of Regulations, title 18, sections 1807 and 1828, respectively.

(b) The Board encourages the use of electronic means for the filing of claims and inquiries. A claim or inquiry, or supporting document, may be filed electronically under this section if it is transmitted to the Allocation Group in accordance with instructions provided on the Board's website at www.boe.ca.gov. A claim or inquiry, or supporting document, may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the:

Allocation Group
Audit Determination and Refund Section, MIC: 39
Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0039

The Chief of Board Proceedings may reject any claim or inquiry, or related document, filed in any manner that is not authorized by this section.

(c) A claim or inquiry will be acknowledged and reviewed in accordance with the procedures contained in California Code of Regulations, title 18, section 1807 or 1828.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code Sections 7202, 7203, 7261, 7262, 7270.

Reference: Revenue and Taxation Code sections 7209, 7223.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 6: APPEALS CONFERENCES

5260. REFERRAL TO APPEALS DIVISION FOR APPEALS CONFERENCE; PREFERRED LOCATION FOR APPEALS CONFERENCE.

(a) If a petition for redetermination, petition for reconsideration, claim for refund, or request for innocent spouse or other equitable relief is referred to the Appeals Division for an appeals conference, Board Staff will contact the petitioner, claimant, or person requesting relief:

(1) To verify and update the person's contact information; and

(2) Inquire as to whether the person would prefer that the appeals conference be held at a specific location.

(b) Unless the petitioner, claimant, or person requesting relief indicates another preference, the appeals conference will be held in the district office that conducted the petitioner's audit, recommended denial of the claimant's claim for refund, or recommended denial of a person's request for relief.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5261. NOTICE OF APPEALS CONFERENCE: RESPONSE TO NOTICE OF APPEALS CONFERENCE; SUBMISSION OF ADDITIONAL ARGUMENTS AND EVIDENCE; RECORDING APPEALS CONFERENCES.

(a) Board Proceedings Staff will prepare and mail the petitioner, claimant, or person requesting relief a Notice of Appeals Conference, which must include the date, time, and location of the appeals conference.

(b) Board Proceedings Staff will include a Response to Notice of Conference form with each Notice of Appeals Conference. A recipient of a Notice of Appeals Conference should complete and return the Response to Notice of Conference within 15 days of the date Board Proceedings Staff mailed the Notice of Appeals Conference.

(c) If the petitioner, claimant, person requesting relief, or other person described in section 5264 (other than the conference holder) has not already submitted all of its written arguments and documentary evidence prior to the issuance of the Notice of Appeals Conference, the arguments and evidence should be submitted to the Appeals Division within 15 days of the date Board Proceedings Staff mailed the Notice of Appeals Conference.

(d) Appeals conferences are not recorded. If the petitioner, claimant or person requesting relief would like to record the appeals conference the person must check the appropriate box on the Response to Notice of Conference and agree to provide a copy of any recording or transcript to the Appeals Division upon request.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5262. REQUESTS TO RESCHEDULE OR POSTPONE APPEALS CONFERENCES.

(a) The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) for the filing of requests to postpone or reschedule an appeals conference. A request to postpone or reschedule an appeals

conference may be filed electronically under this section if it is transmitted to the Board Proceedings Division in accordance with instructions provided on the Board's website at www.boe.ca.gov. Requests to postpone or reschedule an appeals conference may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the:

Board Proceedings Division, MIC: 97
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0097

The Chief of Board Proceedings may reject any request to postpone or reschedule an appeals conference filed in any manner that is not authorized by this section.

(b) Rescheduling. If there is a scheduling conflict for an appeals conference scheduled to be held in-person at headquarters, by videoconference or by telephone, the appeals conference may be rescheduled with the same conference holder generally within 30 days to accommodate the parties. At the discretion of the Chief Counsel, a second rescheduling may be allowed. Board Proceedings Staff may reschedule an appeals conference scheduled to be heard at a district office to a different district office, to headquarters, to a videoconference, or a telephone conference, or may postpone the appeals conference to the same district office as provided in subdivision (c).

(c) Postponement. Postponements are only applicable to appeals conferences that are scheduled at a district office. A postponement results in the case being placed back into the inventory of unassigned cases and reassigned when appeals conferences are subsequently held at such district office. If a party requests a postponement of an appeals conference to be held at a district office within 15 days after the date of the Notice of Appeals Conference sent by Board Proceedings Staff and has sufficient justification for requesting the postponement, the Chief of Board Proceedings may allow the postponement. If a party requests a postponement of the appeals conference later than 15 days after the date of the Notice of Appeals Conference, and can demonstrate extreme hardship (e.g., illness, death, disaster) for requesting the postponement, the Chief Counsel may allow the postponement. The Chief Counsel may only grant a party's second or subsequent request to postpone a previously postponed appeals conference if the party requesting postponement can demonstrate extreme hardship, however, a previously postponed appeals conference may be rescheduled as provided in subdivision (b).

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5263. WAYS TO EXPEDITE AN APPEALS CONFERENCE.

(a) Board Proceedings Staff will schedule an appeals conference within 60 days of receiving written notice that the petitioner, claimant, or person requesting relief has agreed to:

- (1) Attend an appeals conference at the Board's headquarter located at 450 N Street, Sacramento, California;
- (2) Attend a video conference at one of the Board's district offices with the necessary equipment; or
- (3) Participate in a telephone conference (Board Staff will place the call).

(b) Subdivision (a) only applies to written notices sent to the Board Proceedings Division at or before the due date of the Response to Notice of Conference. Such a written notice may be included in the Response to Notice of Conference.

(c) Once the deadline to file the written notice described in subdivision (a) has expired, Board Proceedings Staff will attempt to schedule an appeals conference as soon as practicable, if the petitioner, claimant, or person requesting relief notifies the Board Proceedings Division that it is willing to appear on shortened notice.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5264. CONDUCTING THE APPEALS CONFERENCE; PARTIES TO THE APPEALS CONFERENCE; NATURE OF THE APPEALS CONFERENCE; FAILURE TO APPEAR.

(a) Appeals Staff. The appeals conference will be held by Appeals Staff that has not had any prior involvement in the matter being discussed at the appeals conference. It is the responsibility of Appeals Staff to take a fresh look at the law and the facts and make Appeals Staff's own objective recommendation.

(b) Department Representative. Generally, Board Staff from the appropriate Department will be present at the appeals conference to provide the reasons for determining that a tax or fee is due, a claim for refund should be denied, or a request for relief should not be granted. Where appropriate, other Board Staff may be present at the appeals conference.

(c) Other Agency Representatives. A representative from another state agency may be present at appeals conferences where the tax or fee at issue is administered by the representative's agency. Such a representative will provide his or her agency's reasons for determining that the tax or fee at issue is due or should not be refunded.

(d) Nature of Appeals Conference. The appeals conference is not an adversarial proceeding; it is an informal discussion of the relevant facts and applicable laws. As such, it is important that all relevant information be presented to Appeals Staff.

(1) A party may submit additional written arguments and documentary evidence to Appeals Staff at any time before or during the appeals conference. (When possible, such arguments and evidence should be submitted within 10 days of receipt of a Notice of Appeals Conference.)

(2) If any party requests permission to submit additional written arguments and documentary evidence at the appeals conference, Appeals Staff may grant that party 15 days after the appeals conference to submit such arguments and evidence. If there is sufficient justification, Appeals Staff may also grant the requesting party an additional 15 days to submit additional written arguments and documentary evidence. Appeals Staff may not grant further extensions of time to submit additional written arguments and documentary evidence without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee.

(3) If a party submits additional written arguments and documentary evidence after the appeals conference, the other party will be granted 15 days to respond to such arguments and evidence.

(e) Failure to Appear. If a petitioner, claimant, or person requesting relief, or an authorized representative fails to appear at an appeals conference, Appeals Staff will still hold the appeals conference as scheduled.

(f) Once the appeals conference is concluded, Appeals Staff will take the petition, claim for refund, or request for relief under consideration.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7081, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5265. ISSUANCE AND CONTENTS OF A DECISION AND RECOMMENDATION.

(a) Within 90 days after the submission of any additional documents as authorized in section 5264, subdivision (d), Appeals Staff must issue a written report containing Appeals Staff's findings, called a Decision and Recommendation, copies of which must be sent to all parties. The Chief Counsel may allow additional time beyond the 90 days to prepare the Decision and Recommendation. Both the request for additional time and the granting of additional time must be in writing and copies provided to all parties to the appeals conference.

(b) If a party does not appear at the appeals conference, the Decision and Recommendation will be based on all of the information in the file and any additional information provided by the parties, including information provided at the appeals conference.

(c) The Decision and Recommendation must include all of the following:

- (1) A concise statement of each issue raised by the petitioner, claimant, or person requesting relief;
- (2) The position of Board Staff in the appropriate Department on each issue raised by the petitioner, claimant, or person requesting relief;
- (3) A statement of the relevant law applicable to each issue raised by the petitioner, claimant, or person requesting relief;
- (4) A clear application of the relevant law to all the relevant information presented to Appeals Staff;
- (5) Appeals Staff's conclusions and recommendations after applying the relevant law to all of the relevant information; and
- (6) A summary of any additional information or documentation that was not presented to Appeals Staff, which might be relevant to a resolution of the issues raised by the petitioner, claimant, or person requesting relief.

(d) Any party receiving a Decision and Recommendation that discovers a significant factual error should contact Appeals Staff immediately. Appeals Staff may revise the Decision and Recommendation or issue a supplemental Decision and Recommendation to correct such errors.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5266. APPEALS STAFF RECOMMENDATIONS; REQUESTS FOR RECONSIDERATION; REQUESTS FOR ORAL HEARINGS.

(a) Appeals Staff may make the following recommendations in the Decision and Recommendation:

- (1) Deny the petition, claim, or request for relief in its entirety.
- (2) Grant the petition, claim, or request for relief in its entirety.
- (3) Grant the petition, claim, or request for relief in part.

(4) That Board Staff in the appropriate Department re-audit the issues raised in the petition, claim, or request for relief as specified in the Decision and Recommendation.

(b) If the Decision and Recommendation recommends denial of the petition, claim, or request for relief in whole or in part, the petitioner, claimant or person requesting relief may:

(1) File a written request for Appeals Staff to reconsider the petition, claim, or request for relief no later than 30 days after the Decision and Recommendation was issued.

(2) Disagree and file a written request for an oral hearing before the Board no later than 30 days after the Decision and Recommendation was issued. (A petitioner, claimant, or person requesting relief who has previously requested an oral hearing before the Board on the same petition, claim, or request for relief does not need to request an oral hearing at this time.)

(A) If an oral hearing is or was requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.

(B) If an oral hearing has been requested, but it is unclear whether the petitioner, claimant or person requesting relief disagrees with any portion of its Decision and Recommendation (or supplemental Decision and Recommendation) Board Staff will:

(i) Contact the petitioner, claimant, or person requesting relief to inquire as to the existence of such disagreement; and

(ii) Only schedule an oral hearing before the Board if the petitioner, claimant, or person requesting relief confirms that such disagreement exists.

(3) Agree with the Decision and Recommendation.

(c) If the Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part, the Department represented at the appeals conference, and any state agency represented at the appeals conference, may:

(1) File a written request for Appeals Staff to reconsider the petition, claim, or request for relief within 30 days after the Decision and Recommendation was issued.

(2) Agree with the Decision and Recommendation.

(d) Notwithstanding subdivision (c), if the Decision and Recommendation recommends that a petition, claim for refund, or request for relief be granted in whole or in part, any state agency represented at the appeals

conference may file a written request for an oral hearing before the Board no later than 30 days after the Decision and Recommendation was issued. If an oral hearing is requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.

(e) If Appeals Staff receive a request for reconsideration, Appeals Staff will prepare a Supplemental Decision and Recommendation addressing any new information provided in the request for reconsideration, copies of which will be sent to all parties. Appeals Staff may also issue a Supplemental Decision and Recommendation as necessary to clarify or correct the information, analysis, or conclusion contained in a Decision and Recommendation or prior Supplemental Decision and Recommendation. A Supplemental Decision and Recommendation must satisfy all the requirements of section 5265, subdivision (c).

(f) If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part and the amount granted exceeds \$50,000, the recommendation will be sent to the Board for approval. Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether the petition, claim, or request should be granted and in what amount, and will do so without further documentation or testimony from the claimant, unless the claimant has requested and been granted an oral hearing before the Board regarding a partial denial of the same claim for refund.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5267. ISSUANCE OF POST APPEALS CONFERENCE NOTICES.

(a) A Notice of Redetermination, Statement of Account, Notice of Refund, or Denial of Claim will be issued based on a Decision and Recommendation if:

(1) The petitioner, claimant, or person requesting relief and the department or other agency represented at the appeals conference agree with the Decision and Recommendation in its entirety;

(2) The petitioner, claimant, person requesting relief, or another agency represented at the appeals conference do not request an oral hearing before the Board; or

(3) The petitioner, claimant, or person requesting relief's request for a discretionary oral hearing is denied.

(b) Notwithstanding the provisions of subdivision (a), a Notice of Determination, Statement of Account, or Notice of Refund will not be issued based upon a Decision and Recommendation if:

(1) The Decision and Recommendation recommends granting a petition or claim for refund because the petitioner or claimant:

(A) Accepted a valid resale or exemption certificate; or

(B) Did not issue a valid resale or exemption certificate.

(2) Appeals Staff recommends imposing a related liability on:

(A) The person who issued the resale or exemption certificate described in subparagraph (A) of paragraph (1) of this subdivision; or

(B) The person who sold tangible personal property without receiving a valid resale or exemption certificate from the petitioner or claimant described in paragraph (1) of this subdivision;

(3) The person described in paragraph (2) has requested and been granted an oral hearing to contest Appeals Staff's recommendation; and

(4) The Chief Counsel determines that both matters should be consolidated for an oral hearing before the Board.

(c) For purposes of this section, references to "Decision and Recommendation" include Supplemental Decisions and Recommendations described in section 5266.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5268. PROCEDURES FOR CONDUCTING BOARD HEARINGS.

Board hearings will be conducted under the hearing procedures set forth in chapter 5 of this division.

Note: Authority cited: Government Code section 15606(a); Health and Safety Code sections 105190, 105310; Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301, 60601; Public Utilities Code section 893.

Reference: Revenue and Taxation Code sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350 and 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 7: OPTIONAL BRIEFS FOR BOARD HEARINGS

5270. REQUIREMENTS FOR BRIEFS; BRIEFING SCHEDULE; NON-PARTY BRIEFS; ADDITIONAL BRIEFING.

(a) Optional Briefing. If a party to an Appeals Conference or person requesting relief is granted a hearing before the Board, the parties to such hearing may submit briefs in accordance with the rules set forth in this section. However, all briefs permitted to be filed under this section, other than briefs required by paragraphs (1) and (3) of subdivision (f), are optional.

(b) Requirements for Briefs.

(1) Timeliness. All briefs must be filed within the time periods provided in this section unless an extension is granted by the Chief Counsel in accordance with section 5271.

(2) Filing.

(A) Electronic Filing. The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) for the filing of briefs and related documents. Briefs and related documents may be filed electronically under this section if they are transmitted to the Chief of Board Proceedings in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(B) Other Methods. Briefs and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the Chief of Board Proceedings, at the following address:

Chief of Board Proceedings, MIC: 80
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0080

(C) The Chief of Board Proceedings may reject any brief or related document filed in any manner that is not authorized by this section.

(D) Notice. All briefs shall also be mailed or personally delivered to the other parties to the Board hearing, other than the Department represented at the appeals conference under section 5264, subdivision (b).

(3) Format. Briefs may not exceed:

(A) 30 typed or handwritten, double-spaced, or 15 typed or handwritten, single-spaced;

(B) 8 1/2" by 11" pages;

(C) Printed only on one side in a type-font size of at least 10 points or 12 characters per inch, or the equivalent;

(D) Excluding exhibits.

(4) The Chief Counsel may extend the page limit in paragraph (3) prior to the deadline for filing a brief based upon a written application setting forth circumstances that justify additional pages. In the event a brief does not conform to the form and page limits specified above, the submitted brief may be returned by the Chief of Board Proceedings. If a brief is so returned, the party will be given 10 days to comply with the form and page limits, and failure to do so within the 10-day period constitutes a waiver of the opportunity to submit the brief.

(c) Opening Briefs. Any party that requested a Board hearing under section 5266 may file an opening brief. An opening brief must contain a statement of the issues, a statement of the facts, and a discussion of the legal authorities, including statutes and regulations, relied on by the party submitting the opening brief. Opening briefs must be filed with the Chief of Board Proceedings no later than 55 days before the Board hearing.

(d) Reply Briefs. Any party to a Board hearing may file a reply brief in response to any opening brief. A reply brief must contain a statement of the issues, including relevant issues not raised by the opening brief, a statement of the facts as understood by the party submitting the reply brief, a discussion of the legal authorities, including relevant statutes and regulations, relied on by the party submitting the reply brief, and the assertion of any affirmative defenses. Reply briefs must be filed with the Chief of Board Proceedings no later than 35 days before the Board hearing.

(e) Response to Reply Brief. Any party to a Board hearing may file a response to a reply brief. A response to a reply brief may only address new issues or arguments raised in the reply brief to which it responds. A response to a reply brief must be filed with the Chief of Board Proceedings no later than 20 days before the Board hearing. The Chief of Board Proceedings must reject a response to a reply brief that exceeds the scope permitted by this subdivision.

(f) Additional Briefing.

(1) Post-Hearing Briefs. The Board may permit or require the filing of post-hearing briefs and memoranda of legal authorities, including relevant statutes and regulations, on any matters considered at a Board hearing. However, any post-hearing submissions are permitted only by order of the Board, on the subject matter specified, and within the time limits prescribed by the Board.

(2) Non-Party (Amicus) Briefs. A person that is not a party to a Board hearing may file a brief or letter with the Chief of Board Proceedings no later than 20 days before the Board hearing, and the parties may file

responses to such brief or letter with the Chief of Board Proceedings no later than 10 days before the hearing. The response by any party may address only the points of disagreement the party has with the non-party brief or letter. A non-party post-hearing brief or letter may be filed only if the Board has requested post-hearing briefing from the parties and then no later than the end of the post-hearing briefing period prescribed by the Board for the parties. A non-party brief must conform to the general requirements set forth in subdivision (b). A non-party brief or letter must contain a statement regarding the nature of the non-party's interest in the outcome of the proceeding.

(3) Additional briefing. In extraordinary situations, the Board or Appeals Staff may request additional briefing from either party after the briefing period is ordinarily complete. Any such requested briefing must be filed within the time specified by the Board or Appeals Staff.

(g) Briefs Filed by Unrepresented Parties. Notwithstanding subdivisions (c), (d), and (e), a party who appears at a Board hearing without a representative, and who has not employed a representative to prepare a brief, may, at the discretion of the Board, submit a brief on the day of the hearing. A party who receives representation from a Board-approved pro bono or clinical program is considered to be unrepresented for purposes of this subdivision.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5271. EXTENSIONS OF TIME FOR FILING BRIEFS.

The Chief Counsel may grant a reasonable extension of time for the filing of any brief, upon a showing of reasonable cause. The request for an extension of time must be submitted in writing before the scheduled due date of any brief. If an extension of time is granted for the filing of any brief, the Chief Counsel will also grant an appropriate extension of time for filing a response to such brief.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

